

FILED 30 SEP '11 10:55 USDC-ORP

Michael H. Korpi, OSB #031594
McKENZIE ROTHWELL BARLOW
& KORPI, P.S.
1325 Fourth Avenue, Suite 910
Seattle, WA 98101
(206) 224-9900

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

TRUSTEES OF THE WESTERN
STATES HEALTH & WELFARE
TRUST FUND OF THE OPEIU,

Plaintiffs,

vs.

STATE STREET GLOBAL ADVISORS,
INC.,

Defendant.

NO. **CV '11 - 1192 - HA**

COMPLAINT FOR NEGLIGENCE,
BREACH OF FIDUCIARY DUTY,
BREACH OF CONTRACT, AND
DAMAGES

Plaintiffs allege:

I. PARTIES AND JURISDICTION

1. Plaintiffs are trustees of the Western States Health & Welfare Trust Fund of the OPEIU ("the Trust"), which is a multiemployer joint labor-management employee benefit plan governed by the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.*, as amended (hereafter "ERISA"). The Trust provides medical and related benefits to eligible employees and their beneficiaries of employers that participate in the Trust. The principal place of business of the Trust is in Portland, Oregon.

COMPLAINT FOR NEGLIGENCE, ETC. - 1

167.010 pldg mi281401

McKENZIE ROTHWELL BARLOW
& KORPI, P.S.
1325 FOURTH AVENUE, SUITE 910
SEATTLE, WA 98101
(206) 224-9900

#43003

1 maintained by defendant. On January 28, 2009 the Trust's administrative agent faxed a
 2 transaction request to defendant for liquidation and transfer of the account, which was in the
 3 amount of \$7,532,366.83. At that time the precise amount of the account was unknown to
 4 plaintiffs.

5 9. On January 30, 2009 defendant notified the Trust's investment consultant that
 6 \$6,076,194.79 would be wired to Vanguard on February 4, 2009, without accounting for the
 7 remaining \$1,456,172.04 in the account. On February 4, 2009, which was the settlement
 8 deadline under defendant's standard of "trade date plus three business days," as well as the
 9 deadline specified in the administrative agent's instructions, defendant wired \$6,076,194.79 to
 10 Vanguard. Vanguard received and invested the \$6,076,194.79 in fixed-income funds in
 11 accordance with plaintiffs' directions.

12 10. Two days later, on February 6, 2009, without notifying plaintiffs or their duly
 13 authorized agents, defendant wired the remaining \$1,456,172.04 in the account to Vanguard.
 14 Without requesting instructions from anyone about the proper investment of the
 15 \$1,456,172.04, Vanguard improperly invested this second wired amount exclusively in its
 16 S&P 500 mutual fund. Instead, Vanguard should have invested that amount in three mutual
 17 funds, including the S&P 500 fund, in accordance with plaintiffs' directions and the allocation
 18 targets of the Trust's investment policy.
 19
 20

21 **III. FIRST CLAIM FOR RELIEF: NEGLIGENCE**

22 11. Plaintiffs reallege the allegations contained in paragraphs 6 through 10 as
 23 though fully set forth herein.
 24
 25

1 12. At all material times, defendant owed plaintiffs a duty of reasonable care to
 2 comply with its own settlement-deadline standard of "trade date plus three business days"
 3 with respect to investment fund transfers, and to notify plaintiffs and its duly authorized
 4 agents of the dates and amounts of all investment moneys transferred at plaintiffs' direction.

5 13. Defendant's surreptitious transfer to Vanguard of the remaining \$1,456,172.04
 6 in the account after the settlement deadline constituted a breach of defendant's duty of care to
 7 plaintiffs. As a direct and proximate result of defendant's breach, plaintiffs sustained
 8 damages in the form of lost investment returns totaling \$116,445, to be proved at the time of
 9 trial.
 10

11 **IV. SECOND CLAIM FOR RELIEF: BREACH OF FIDUCIARY DUTY**

12 14. Plaintiffs reallege the allegations contained in paragraphs 6 through 10 as
 13 though fully set forth herein.

14 15. At all material times, defendant was a custodian of Trust assets, including the
 15 \$1,456,172.04 that was improperly invested as a direct and proximate result of defendant's
 16 surreptitious and unexplained separate transfer of that amount to Vanguard. These moneys
 17 were plan assets over which defendant exercised authority and control. Defendant is thus a
 18 fiduciary under section 3(21)(A)(i) and (iii) of ERISA, 29 U.S.C. § 1002(21)(A)(i) and (iii).
 19

20 16. By wrongfully transferring \$1,456,172.04 to Vanguard in a separate
 21 transaction without notifying plaintiffs or their duly authorized agents, thus causing damage to
 22 plaintiffs, defendant breached its fiduciary duty under sections 409 and 502(a)(2) of ERISA,
 23 29 U.S.C. § 1109 and 1132(a)(2).
 24
 25

1
2 **V. THIRD CLAIM FOR RELIEF: BREACH OF CONTRACT**

3 17. Plaintiffs reallege the allegations contained in paragraphs 6 through 10 as
4 though fully set forth herein.

5 18. Defendant's actions set forth in paragraphs 6 through 10 constitute a breach of
6 the Transaction Security Agreement.

7 19. As a result of defendant's breach of the Agreement, plaintiffs sustained
8 damages in the form of lost investment returns totaling \$116,445, to be proved at the time of
9 trial.
10

11 WHEREFORE, plaintiffs pray for the following relief:

12 1. For judgment in the amount of \$116,445, representing the full amount of the
13 lost investment returns as a result of defendant's negligence, breach of fiduciary duty, and
14 breach of contract;

15 2. For any additional amounts lost as a result of defendant's negligence, breach of
16 fiduciary duty, and breach of contract;


17 3. For plaintiffs' reasonable attorney's fees and costs; and

18 4. For such other and further relief as the court deems just and equitable.
19

20 DATED this 29th day of September, 2011.

21 McKENZIE ROTHWELL BARLOW & KORPI, P.S.

22
23 By:


Michael H. Korpi, OSB #031594
Attorneys for Plaintiffs
24
25